

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROBERT L. GELTZER as Chapter 7
Trustee of HOWARD P. EFFRON,
Plaintiff,

- against -

UTIX GROUP, INC.,

Defendant.
-----X

Case No. 07 cv 02472 (RJS)(THK)

**NOTICE OF MOTION TO
WITHDRAW AS COUNSEL**

PLEASE TAKE NOTICE that, upon the Order dated January 24, 2008, the affidavit of Mark A. Harmon, sworn to January 23, 2008, and upon all other papers and proceedings herein, the undersigned will move before the Honorable Richard J. Sullivan, in Courtroom 21C, at the United States Courthouse, 500 Pearl Street, New York, NY 10007-1312, on February 5, 2008 at 10:00 a.m., or as soon thereafter as counsel may be heard, for leave to withdraw as counsel to the defendant Utix Group, Inc. ("Utix"), pursuant to Rule 1.4 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York.

PLEASE TAKE FURTHER NOTICE that pursuant to the Order dated January 24, 2008, defendant Utix shall submit a letter by Monday, February 4, 2008, stating either its opposition to Hodgson Russ LLP's motion to withdraw or its intention to retain new counsel.

Dated: New York, New York
January 25, 2008

HODGSON RUSS LLP

By: 

Mark A. Harmon, Esq. (9126)

Attorneys for Defendant Utix Group, Inc.

1540 Broadway, 24th Floor

New York, NY 10036

(212) 751-4300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROBERT L. GELTZER as Chapter 7
Trustee of HOWARD P. EFFRON,
Plaintiff,

- against -

UTIX GROUP, INC.,

Defendant.
-----X

Case No. 07 cv 02472 (RJS)(THK)

**AFFIDAVIT IN SUPPORT OF
MOTION FOR LEAVE TO
WITHDRAW AS COUNSEL**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARK A. HARMON, being duly sworn, deposes and says:

1. I am a member of the firm of Hodgson Russ LLP, attorneys of record for defendant Utix Group, Inc. ("Utix"). I submit this affidavit in support of the motion made by Hodgson Russ LLP pursuant to Rule 1.4 of the Local Rules of Civil Procedure for the United States District Court, Southern District of New York, for leave to withdraw as counsel for Utix.

2. The basis for withdrawal is that Utix is no longer cooperating with us in the defense of this action. Specifically, Utix has failed to respond to multiple inquiries in connection with our efforts to provide complete discovery responses and has not indicated its commitment to pay for legal fees and costs incurred in defending this action.

3. The parties have made their initial disclosures and are scheduled to exchange discovery responses on January 29, 2008.

4. At present, there is a settlement conference before Magistrate Judge Katz scheduled for February 5, 2008. This action has not been set for trial and there is no scheduling order currently in place respecting other proceedings.

5. Further, there are no motions pending at this time.

6. Hodgson Russ LLP requests that the Court grant to Utix a reasonable extension of any applicable time periods and such other relief as the Court may consider appropriate for its protection.

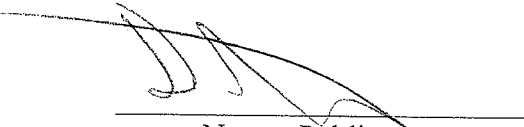
7. Hodgson Russ LLP will coordinate with any substitute counsel designated by Utix to secure a smooth and speedy transition of the representation in order to avoid any prejudice to the rights of Utix.

8. There has been no prior request for the relief sought herein.

WHEREFORE, it is respectfully requested that this Court grant the motion of Hodgson Russ LLP for leave to withdraw as counsel to defendant Utix Group, Inc.


Mark A. Harmon

Sworn to before me this
23rd day of January, 2008



Notary Public
DANIEL S. STEINBERG
Notary Public, State of New York
No. 02ST4981936
Qualified in Westchester County
Commission Expires May 20, 2011

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

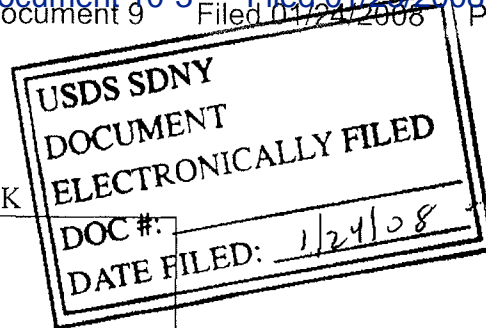
ROBERT L. GELTZER,

Plaintiff,

-v-

UTIX GROUP, INC.,

Defendant.



No. 07 Civ. 2472 (RJS)

ORDER

RICHARD J. SULLIVAN, District Judge:

On January 24, 2008, Hodgson Russ LLP submitted a proposed order to show cause relating to its motion to withdraw as counsel for defendant Utix Group, Inc. in the above-entitled action. By affidavit dated January 23, 2008, Mark A. Harmon, a member of Hodgson Russ LLP, presents the following bases for withdrawal: (1) defendant has ceased to cooperate and/or to communicate with Hodgson Russ LLP with regard to the instant action; and (2) defendant has failed to "indicate[] its commitment to pay for legal fees and costs incurred in defending [the] action." (Marcus Aff. ¶¶ 1-2.) However, in its submissions, Hodgson Russ LLP does not indicate that it has served notice upon defendant of its motion to withdraw as counsel.

Disciplinary Rules 2-110(C)(1)(d) and (f) of the New York Code of Professional Responsibility provide for permissive withdrawal of counsel if their client either "renders it unreasonably difficult" for counsel to represent effectively the client or if the client "[d]eliberately disregards an agreement or obligation to the lawyer as to expenses or fees." N.Y. Code Prof. Resp. DR 2-110(C)(1)(d), (f); accord ABA Model Code Prof. Resp. DR 2-110(C)(1)(d), (f). In addition, pursuant to Local Civil Rule 1.4 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, "[c]ourts have long recognized that a client's continued refusal to pay legal fees constitutes a 'satisfactory

reason' for withdrawal [of counsel]."¹ *Team Obsolete Ltd. v. A.H.R.M.A. Ltd.*, 464 F. Supp. 2d 164, 166 (E.D.N.Y. 2006) (collecting cases). As such, "[n]umerous courts have permitted attorneys to withdraw when clients deliberately disregard fee agreements," *McGuire v. Wilson*, 735 F. Supp. 83, 85 (S.D.N.Y. 1990) (collecting cases), or where clients fail to cooperate or to communicate with counsel, *see, e.g., Statute of Liberty v. Intern. United Indus.*, 110 F.R.D. 395, 397 (S.D.N.Y. 1986).

Accordingly,

IT IS HEREBY ORDERED that Hodgson Russ LLP shall file its motion, and supporting papers, with the Court forthwith.

IT IS FURTHER ORDERED that Hodgson Russ LLP shall serve a copy of this Order, as well as a copy of its motion and supporting papers upon all parties by January 28, 2008, and file proof of service with the Court.

IT IS FURTHER ORDERED that defendant Utix shall submit a letter by Monday, February 4, 2008, stating either its opposition, if any, to Hodgson Russ LLP's motion to withdraw or its intention to retain new counsel.²

SO ORDERED.

Dated: New York, New York
January 24 2008



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

¹ Pursuant Local Civil Rule 1.4, a motion to withdraw as counsel may be granted "upon a showing by affidavit." Local Civil Rule 1.4.

² The Court notes that, because defendant is a corporation, it must be represented by an attorney in this action.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

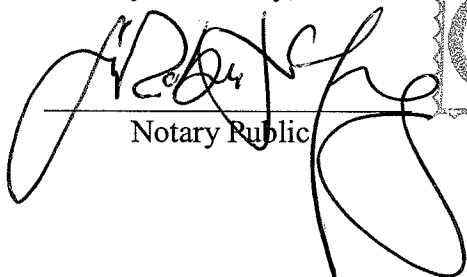
KELLI GOOD, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides in Brooklyn, New York. That on the 25th of January, 2008, deponent served the within NOTICE OF MOTION TO WITHDRAW AS COUNSEL upon:

Mark L. Pover (mpover@utix.com)

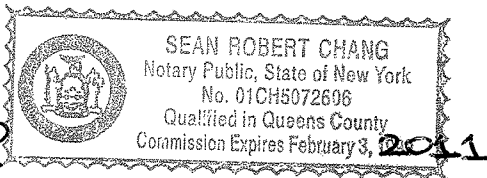
by electronic mail.

Kelli Good
Kelli Good

Sworn to before me this
25th day of January, 2008.



Notary Public



AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

KELLI GOOD, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides in Brooklyn, New York. That on the 25th of January, 2008, deponent served the within NOTICE OF MOTION TO WITHDRAW AS COUNSEL upon:

Robert A. Wolf, Esq.
Bryan Cave LLP
1290 Avenue of the Americas
New York, New York 10104

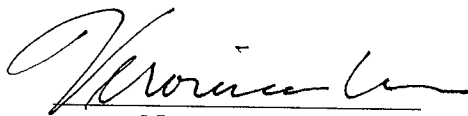
Utix Group, Inc.
c/o Mark L. Pover
170 Cambridge Street
Burlington, MA 01803

by Federal Express, next business day delivery.



Kelli Good

Sworn to before me this
25th day of December, 2008.


Notary Public

VERONICA KWON
Notary Public, State of New York
No. 01KW6175353
Qualified in Nassau County
Commission Expires Oct. 9, 2011